

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions of the Telecommunications Act of	)	
1996	)	
	)	CC Docket No. 95-116
Telephone Number Portability	)	

**REPLY COMMENTS OF THE  
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association ("CTIA")<sup>1</sup> hereby submits its Reply Comments on the *Third Order on Reconsideration* in CC Docket No. 99-200, *Third Further Notice of Proposed Rulemaking* in CC Docket 99-200, and *Second Further Notice of Proposed Rulemaking* in CC Docket No. 95-116.<sup>2</sup> In its comments, CTIA urged the Commission to refrain from changes that add new markets and create new rules that expand its numbering mandates so close to the November 24, 2002, implementation deadline. In particular, CTIA stated that *all* carriers who have switches either within the largest 100 MSAs or in areas adjoining the largest 100 MSAs, but

---

<sup>1</sup> CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> See *Third Order on Reconsideration in CC Docket No. 99-200, Third Further Notice of Proposed Rulemaking in CC Docket 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 95-116*, FCC 02-73 (rel. March 14, 2002) ("Further Notice").

provide service to no or few customers within the MSA, should be exempt from the LNP requirement unless they receive a request for LNP. CTIA also opposed the extension of the pooling mandate to carriers that have not received a request to provide wireless LNP in a particular switch, and thus are not capable of supporting number pooling, in any rate center where there is only a minimal opportunity to pool numbers, and thus no benefit to either competition or number resource optimization. Finally, CTIA urged that the FCC not apply the November 24<sup>th</sup> implementation deadline to carriers outside of the original Top 100 MSAs. Expansion of thousands-block number pooling where needed for number conservation and optimization can proceed on a case-by-case basis, but should not begin until after pooling has been implemented in all of the MSAs listed in the recently released FCC Pooling schedule. Carriers who serve markets outside of the original Top 100 MSAs were not included in the FCC's mandate prior to December 28, 2001, and not a single carrier received a bona fide request triggering their obligation to support wireless LNP. In short, they had absolutely no reason to anticipate they would need to implement wireless LNP by the November 24, 2002, date, and thus are not prepared to meet the deadline.

In this reply, CTIA briefly addresses the Comments of Mid-Missouri Cellular in response to the *Further Notice*,<sup>3</sup> and attaches CTIA's April 25, 2002, *Ex Parte* Comments in WT Docket No. 01-84,<sup>4</sup> which responds to many of the issues Mid-Missouri has

---

<sup>3</sup> Comments of Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular, CC Dkt. No. 99-200 (May 6, 2002).

<sup>4</sup> *Ex Parte* Comments of the Cellular Telecommunications & Internet Association; WT Dkt. No. 01-184 (April 25, 2002), attached as Attachment I hereto.

injected into this proceeding. While CTIA disagrees with some aspects of Mid-Missouri's Comments, CTIA and Mid-Missouri are in full agreement that the Commission should forbear from the implementation of wireless LNP, and that the Commission should not expand the definition of the 100 largest MSAs in any way that adds carriers to that category.

## **DISCUSSION**

Mid-Missouri raises two issues in its Comments that merit a brief reply. First, Mid-Missouri proposes a technical solution to number pooling as an alternative to the MIN/MDN separation technique adopted many years ago by the wireless industry in a series of open forums as the best technical solution to wireless LNP. Second, Mid-Missouri invites the Commission, without notice or comment, to turn this *Number Resource Optimization* proceeding into a new rulemaking regulating how CMRS carriers compete with one another. CTIA opposes both suggestions.

Like CTIA, Mid-Missouri recognizes that the MIN/MDN separation needed to support both pooling and wireless LNP imposes significant burdens on CMRS carriers, often without commensurate benefits.<sup>5</sup> In an attempt to ameliorate this burden, Mid-Missouri proposes that the Commission forbear from imposing the wireless LNP mandate, and once freed of porting, that CMRS carriers be permitted to implement pooling without deploying the MIN/MDN separation. As described by Mid-Missouri, under its proposal the recovery of both contaminated and uncontaminated thousand

---

<sup>5</sup> Mid-Missouri agrees that the MIN/MDN separation technique is required to support wireless LNP, but does not agree that MIN/MDN separation is required to support pooling. See Mid-Missouri Comments at 11.

blocks should proceed precisely as scheduled, but the North American Numbering Plan Administrator (“NANPA”) should not be permitted to assign to any wireless carrier any contaminated thousand block recovered from any another wireless carrier. Mid-Missouri reasons that roamer validation can proceed using a wireless carrier’s existing software and validation techniques so long as no contaminated thousand blocks are reassigned to any wireless carrier. Unfortunately, when a working group of the North American Numbering Council (“NANC”) proposed a similar option two years ago, the NANC rejected the proposal because it did not constitute “full pooling.”<sup>6</sup> Based on the NANC’s determination, and the mandate to support wireless LNP (pending Commission forbearance), wireless carriers have developed IT and OSS systems that support a pooling solution based on MIN/MDN separation. Changing direction now would take the wireless industry off an already tight implementation course and would delay wireless number pooling.

Mid-Missouri also invites the Commission, without notice or comment, to go well beyond the scope of this *Number Resource Optimization* proceeding and impose rules regulating wireless carriers’ contractual agreements with their customers, and the terms on which carriers bundle the provision of wireless phones and wireless service. In particular, Mid-Missouri asks that the Commission should require, as a prerequisite to requesting wireless LNP, that carriers:

- 1) Have an existing NPA-NXX in the same rate center with the requested carrier maintains an NPA-NXX;
- 2) Not impose any locks ...on its subscribers handsets; and

---

<sup>6</sup> See North American Numbering Council (“NANC”) Report, Wireless Number Portability Subcommittee, Wireless Pooling Alternative Evaluation (July 20, 1999), reported in NANC Minutes for August, 1999, meeting.

- 3) Waive or not require ... any contractual restrictions that force a subscriber of the requesting carrier to incur any “cancellation charge” in excess of that required to offset any *bona fide* handset subsidy in the original handset sale.<sup>7</sup>

The Commission should reject Mid-Missouri’s proposal to adopt rules regulating wireless carriers’ contractual agreements with their customers, and the terms on which carriers bundle the provision of wireless phones and wireless service. First, such proposals clearly are outside of the scope of this proceeding, and the Commission cannot proceed without providing proper Notice of its intent to adopt such rules.<sup>8</sup> Moreover, in past proceedings that were focused on CMRS competition and carriers’ marketing practices, the Commission consistently has embraced the power of competitive markets to protect consumers from unreasonable discrimination,<sup>9</sup> and declined to restrict carriers’ bundling of wireless phones and service.<sup>10</sup> Finally, even a cursory review of the Mid-

---

<sup>7</sup> Mid-Missouri Comments at 10.

<sup>8</sup> Section 553(b) of the Administrative Procedure Act requires notice and the opportunity for comment before promulgation of a final rule. *See* 5 U.S.C. § 553(b).

<sup>9</sup> Just last week, the Commission denied a complaint filed against Verizon Wireless alleging certain marketing practices to be unreasonably discriminatory, unjust, and unreasonable and determined that offering discounts and other inducements to some customers that are not made available to all customers is part of a competitive market, and did not violate sections 201 and 202 of the Communications Act (“Act”). The Commission concluded that market forces protected CMRS customers from discrimination, and found no evidence that any market failure prevented customers from switching carriers if they were dissatisfied. *See Jacqueline Orloff v. Vodafone AirTouch Licenses LLC, d/b/a Verizon Wireless and New Par, Memorandum Opinion and Order*, File No. EB-01-MD-009 (rel. May 16, 2002) (“*Orloff MO&O*”).

<sup>10</sup> *See Bundling of Cellular Customer Premises Equipment and Cellular Service*, CC Docket No. 91-34, *Report and Order*, 7 FCC Rcd 4028 (1992)(“*Cellular Bundling Order*”).

Missouri proposals suggests the Commission would be wise to reject each one of them as ill-advised.

For example, requiring a carrier to have an existing NPA-NXX in the same rate center with the requested carrier as a prerequisite to requesting wireless LNP would not encourage efficient number optimization, but rather would force carriers to obtain at least a thousand numbers from rate centers where they might have no business need to establish a facilities point-of-presence. Thus, while this proposal would do nothing to encourage the efficient optimization of scarce numbering resources, if adopted, the proposal would dampen facilities-based competition by needlessly increasing carriers' costs, and provide a disincentive for CMRS carriers to enter new markets.

The proposal to regulate the use of handset locks makes no sense at all. Not only has the Commission found the bundling of wireless phones and service can benefit consumers,<sup>11</sup> but Mid-Missouri's complaint would appear to lie against the handset manufacturers, and not its competitors.<sup>12</sup> As the Commission knows, the commercial mobile wireless industry is a global industry, and many countries use the same frequencies as the United States. But without bundling, citizens of other countries often must pay significantly more for a wireless phone than in the United States. Software that "locks" a phone to a carrier's network enables U.S. carriers to discourage fraudsters (with

---

<sup>11</sup> Specifically, the Commission has found that bundling may be used as an "efficient distribution mechanism" and an "efficient promotional device" that may allow consumers to obtain goods and services "more economically than if it were prohibited." *Cellular Bundling Order*, 7 FCC Rcd at 4030-31.

<sup>12</sup> See Mid-Missouri Comments at 6 ("In order to compete, [Mid-Missouri] has requested "locked" phones .... The handset manufacturers have refused to provide such."). It is not clear why Mid-Missouri would need to "lock" its dual mode analog/TDMA phones since its competitors' networks require either tri-mode handsets, or handsets that use a completely different air-interface.

no intention of maintaining their wireless service) who sign up for a carrier's service solely to obtain a discounted phone that can be resold immediately in a foreign country for a significant profit. Obviously, to be effective, such a lock cannot be easily defeated. Simply put, carriers "lock" phones to discourage gray market sales of the handsets they bundle with service, and the "lock" lowers carriers' overall cost of service, benefiting consumers.<sup>13</sup>

Finally, the proposal to regulate contractual restrictions that impose a "cancellation charge" "in excess of that required to offset any *bona fide* handset subsidy is also ill-advised. In competitive markets there often are additional inducements, *i.e.*, lower prices, for agreements to purchase additional units or be bound for a longer period of time.<sup>14</sup> CMRS carrier costs are reduced when customers commit to a longer service term. Just as magazine subscriptions offer a lower price per issue for longer subscription terms, CMRS carriers reward customers who are willing to sign long term agreements with lower rates. If a customer could subscribe to the lower long term rate, and then terminate service prior to the expiration date of the service agreement, carriers would

---

<sup>13</sup> Given the multiple digital air interfaces in the United States, the situation Mid-Missouri describes is the rare exception: in the overwhelming majority of markets, a wireless customer seeking to move to a new carrier will require a new handset to be compatible with the new carrier's air interface and frequency band(s). See *Sixth Report, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, FCC 01-192 (rel. July 17, 2001), at 27, and Appendix E thereto. Thus, the handset lock is irrelevant to domestic competition.

<sup>14</sup> Also, it would be unwise to invite the Commission to regulate what constitutes a "*bona fide*" handset subsidy. The Commission has just recognized that different customers, based on their willingness to "haggle" in a competitive market, will receive different inducements. See *Orloff MO&O* at 10-11. In a competitive market, a "*bona fide*" inducement is what it takes at that moment to acquire that customer.

have no incentive to offer inducements (such as lower prices, and premium phones) in exchange for a customer's agreement to enter into a contract for an extended term.

### **CONCLUSION**

As CTIA advised in its May 6<sup>th</sup> Comments, the Commission should refrain from moving the goalposts and changing the rules as carriers struggle to implement the Commission's numbering mandates in the few months remaining before the November 24, 2002 deadline. Adding new markets, expanding mandates, and adopting and withdrawing rules, create new burdens without obvious benefits to either competition or number optimization. Moreover, the technical solution proposed by Mid-Missouri does not support either wireless LNP or the Commission's definition of Thousands Block Number Pooling. Finally, the Commission should reject Mid-Missouri's proposals that invite the Commission, without notice or comment, to adopt rules regulating wireless carriers' contractual agreements with their customers, and the terms on which carriers bundle the provision of wireless phones and wireless service.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS  
& INTERNET ASSOCIATION**

/s/ Michael Altschul

Michael F. Altschul  
Senior Vice President, General Counsel

1250 Connecticut Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 785-0081

Its Attorney

May 20, 2002